

ORGANIZATIONAL SCHEME – 8/13 MEETING

As we prepare to plunge into police records, I wanted to offer a way to frame some of the issues that might help us organize our discussion. Please take these thoughts as suggested topics of conversation only – my intent is not to steer us toward any particular decision, since that's what the next meeting is for. And please, don't be shy with your own suggested additions or subtractions.

I've tried various organizational schemes out in my head over the last few days, and the one that works best for me is to pose a series of questions that we could answer as a group.

1.) Do we want to require the police to release information beyond that required by the California Public Records Act in 6254(f) and/or the department's current practice. If so, what information?

The subcommittee members have indicated clearly and (I think) unanimously that we favor the release of more information – and my sense is that we all want to go beyond what the department is planning, a somewhat fuller release than current practice that complies with the “spirit” of 6254(f), to use Capt. Kirby's phrase. The most obvious categories for us to consider are these:

- a.) Police reports. The packet of sample reports we received from the department includes documents entitled “Police Report,” “Domestic Violence Supplemental,” “Property Report,” “Force Response Report,” “Traffic Collision Report” and “Juvenile Contact Report.”
- b.) Investigative and other similar records produced in support of an arrest or eventual prosecution.
- c.) Statistical reports and tallies, and specifically those involving citizen complaints.

2.) If we decide that departmental reports should be released to the public, should we specify what information within them is OK to redact?

The department has legitimate concerns about protecting ongoing investigations and the safety of individuals, and I think the public will as well. In addition, I imagine we would all agree that the names of juveniles (in most circumstances) and the victims of sex crimes should be withheld. The model ordinance drawn up by the Mercury News, the League of Women Voters and the neighborhood groups took a stab at a list that incorporates all of these concerns. I will attach it to the bottom of this e-mail.

3.) If we decide that department reports should be released to the public, what should we say about the timing of the release?

There are a number of possibilities here. Some of them include:

- a.) At the time the report is filed
- b.) At the time of an arrest (if we choose this option, we might be excluding documents that don't lead to an arrest – say a report on a burglary in your neighborhood that is never solved)
- c.) At the time the report is provided to the defendant in a criminal prosecution.

- d.) At the time the report is filed with the court (which is usually about the same as c).

4.) In the case of investigative and other similar records, if we decide they should be released to the public, what should we say about the timing or circumstances of such a release?

Again, there are various possibilities, and in this case we could choose one or several of them.

- a.) At the time that the court or DA determines that a prosecution will not be sought (this is what the San Francisco ordinance requires).
- b.) At the time the statute of limitations expires.
- c.) If a prosecution is sought, at the time a conviction or acquittal has been entered.

As with police reports above, we may also want to consider what information should be redacted from these records.

5.) In the case of statistical reports, should we devise a list of records or reports we want the department to maintain? If so, what should it include?

I will list here a few things that I have heard mentioned. Most of these the department has released in the past, but not always regularly. I'm sure there are other possibilities.

- a.) An ongoing tally of traffic stops, broken down by ethnicity.
- b.) An ongoing tally of force incidents, by ethnicity.
- c.) An ongoing tally of citizen complaints and officer discipline, with officers identified by a unique number allowing citizens to know if there are recipients of multiple complaints.

6.) Whatever we decide, do we want to set an effective date for our recommendations?

As I think we agree – and as Capt. Kirby has acknowledged – there are certainly ways to structure records and reports that would make it easier (less time-consuming) for the department to release them publicly. We might want to consider whether we want our recommendations to apply even to past records, or only to material produced by the department beginning on some certain date.

Here is the material from the model ordinance. I think it is most useful in specifying what ought to be redacted from material before it is released.

(d) Law Enforcement Information.

(1) The San Jose Police Department shall make available to any person, upon request, any police report, arrest report, or incident report. However, unless the report is requested by a person entitled to the following information under state or federal law, the following information shall be removed from the report before it is released:

(i) With respect to the victim of any crime, the address or telephone number of the victim, except in response to a request made pursuant to Government Code section 6254(f)(3);

(ii) With respect to the victim of any crime any crime defined by Section 220, 261, 261.5, 262, 264, 264.1, 273a, 273d, 273.5, 286, 288, 288a, 289, 422.6, 422.7, 422.75, or 646.9 of the Penal Code, the name of the victim may be withheld at the victim's request, to the extent permitted by Government Code section 6254(f)(2);

(iii) With respect to any person other than an arrestee or suspect, any driver's license or California Identification Card number, social security number, date of birth, place of employment, employee identification number, mother's maiden name, demand deposit account number, savings or checking account number, or credit card number, if contained in the report;

(iv) With respect to any person, including an arrestee or suspect, any social security number, employee identification number, mother's maiden name, demand deposit account number, savings or checking account number, or credit card number, if contained in the report;

(v) The names of juvenile witnesses;

(vi) The name of any juvenile arrestee or suspect, unless and until it has been determined that the juvenile will be charged and prosecuted as an adult, provided that the first name and initial letter of the last name of any juvenile arrestee or suspect shall remain on the report in any event;

(vii) The identity of any confidential source.

Numerical or alphabetic designations should, to the extent practicable, be substituted for names omitted from any report.

(2) All other records pertaining to any investigation, arrest or other law enforcement activity shall be disclosed to the public once the District Attorney or a court determines that a prosecution will not be sought against the subject involved, once a final judgment of conviction or acquittal has been entered, or once the statute of limitations for filing charges has expired, whichever occurs first. However, subdivision (j) of this section notwithstanding, the following individual items of information in the following categories may be segregated and withheld if, on the particular facts, the public interest in nondisclosure clearly and substantially outweighs the public interest in disclosure:

(i) With respect to the victim of any crime, the address or telephone number of the victim, except in response to a request made pursuant to Government Code section 6254(f)(3);

(ii) With respect to the victim of any crime any crime defined by Section 220, 261, 261.5, 262, 264, 264.1, 273a, 273d, 273.5, 286, 288, 288a, 289, 422.6, 422.7, 422.75, or 646.9 of the Penal Code, the name of the victim may be withheld at the victim's request, to the extent permitted by Government Code section 6254(f)(2);

(iii) With respect to any person other than an arrestee or suspect, any driver's license or California Identification Card number, social security number, date of birth, place of employment, employee identification number, mother's maiden name, demand deposit

account number, savings or checking account number, or credit card number, if contained in the report;

(iv) With respect to any person, including an arrestee or suspect, any social security number, employee identification number, mother's maiden name, demand deposit account number, savings or checking account number, or credit card number, if contained in the report;

(v) The names of juvenile witnesses;

(vi) The name of any juvenile arrestee or suspect, unless the juvenile has been charged and prosecuted as an adult, provided that the first name and initial letter of the last name of any juvenile arrestee or suspect shall remain on the report in any event;

(vii) Personal or otherwise private information related to or unrelated to the investigation if disclosure would constitute an unwarranted invasion of privacy;

(viii) The identity of a confidential source;

(ix) Secret investigative techniques or procedures;

(x) Information whose disclosure would endanger law enforcement personnel; or

(xi) Information whose disclosure would endanger the successful completion of an investigation where the prospect of enforcement proceedings is concrete and definite.

Numerical or alphabetic designations should, to the extent practicable, be substituted for names omitted from any report.

(3) The San Jose Police Department shall maintain a record, which shall be a public record and which shall be separate from the personnel records of the Police Department, which reports the number and substance of citizen complaints against the Police Department or its officers, the number and types of cases in which discipline is imposed, and the nature of the discipline imposed. This record shall be maintained in a format which assures that the names and other identifying information of individual officers involved is not disclosed directly or indirectly. However, a unique numerical or alphabetical designation shall be assigned to each officer who is the subject of one or more complaints, so that the public can determine whether multiple complaints have been directed at a single officer, and the nature of those complaints.